No. 267.

Reply Brf. of Critcher for Appts.

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Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed April 19, 1900.

THE CORRALITOS COMPANY, *Appellant*,

vs. No. 267.

THE UNITED STATES AND APACHE INDIANS.

BRIEF IN REPLY FOR APPELLANTS.

In their brief, counsel for the Appellees admit, p. 5, "The general principle of law to be that courts may entertain transitory actions for civil injury, wherever committed, if they have jurisdiction of the parties," but think the rule does not apply to this case.

First, because "The rule relates to Courts of general jurisdiction and to litigation between subjects who stand on an equality before the law". No authority is cited. Whether the jurisdiction is general or limited, the question always is:

Has the Court jurisdiction of the subject-matter and of the parties to the suit? As to the other branch of the above proposition, it may be said—*once in Court*, all parties or subjects stand on an equality before the law.

The act of March 3d, 1891, enacts that *in addition* to the jurisdiction which now is or may hereafter be conferred upon the Court of Claims said court shall have and possess jurisdiction and authority to inquire into and

finally adjudicate in the manner provided in this act *all claims* of the following classes, namely :

First, all claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe or nation in amity with the United States without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for. This is the act that gives jurisdiction to the court, and strictly identifies the claims of which jurisdiction is given. Yoke *vs.* United States and Apache Indians, 173 U. S.

A further reason assigned by counsel why the general rule above admitted does not apply, is "that the general principle regarding transitory actions contemplates a trial of the cause under the principles of law prevailing where the cause of action originated." Was this principle followed in Mitchell *vs.* Harmony, 13 Howard, p. 80? Or, in the cases illustrating our position, cited in McKenna *vs.* Fisk, 1 Howard, 117 ?

It is further said, this is not a case of debt or trespass : that it is not alleged that the defendants, or either of them had ever injured the plaintiff. The trespass alleged consisted of driving off by force, without justification, stock of the value of $74,710.00, to the loss and injury of the plaintiff; and that this depredation was committed by Apache Indians from New Mexico and Arizona. The counsel believe we have not sustained our charge against either the United States or the Apache Nations—the only two defendants. But the act gives us the right of action against these defendants whenever property is thus taken by "Indians *belonging* to any band, tribe or nation.

Counsel for the appellee contend, that the statue should be construed strictly. I say, it should be construed rightly. The United States made the law and consti-

tuted the Courts. The citizen expects justice, and will doubtless receive it. Yet we do not see why a strict construction of the law should be invoked for Indian thieves, rather than for industrious citizens. If the Indian is a ward of the nation, let him be punished, if wrong; and protected, if right.

The Act of 1834.

This Honorable Court will say, whether this suit is brought under the Act of March 3, 1891, or the Act of 1834.

Counsel say, the property was not taken to the United States.

Petitions of this sort are generally prepared, signed and sworn to by unprofessional and illiterate men on the frontier. They are seldom drawn with legal precision or grammatically. They often use disjunctives, for conjunctives. It is the pride of the Court of Claims, to discard form for substance. Accordingly, the meaning of the petition is thus expressed by the Court of Claims, in its opinion, p. 3 of the record. "The substance of the petition (so far as important at this time) is that Indians from the United States, stole plaintiffs property in Mexico and took it from Mexico into the United States."

In conclusion the counsel state "that the disposition made of the stock, was doubtless, unknown to the petitioner &c." Being outside the record, it justifies the remark, that depositions now filed in this cause, prove that our branded [redacted] stock, were afterwards found on the San Carlos reservation in the possession of the United States—sold to them by the Indians.

JOHN CRITCHER,
Counsel for Appellant.